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Attorneys for Defendant
EXPERIAN INFORMATION SOLUTIONS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK

Plaintiff,

v.

**TRANS UNION, LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION SERVICES,
LLC, and CAPITAL ONE BANK, a
national association**

Defendant.

Case No. C-07-4980MJJ

**EXPERIAN INFORMATION
SOLUTIONS, INC.'S ORIGINAL
ANSWER AND AFFIRMATIVE
DEFENSES**

(Fair Credit Reporting Act
15 USC § 1681 *et seq.*)

Defendant Experian Information Solutions, Inc. ("Experian") files its Original Answer and Affirmative Defenses to Plaintiff's Original Complaint ("Complaint") filed by Emelia M. Pasternak as follows:

1. In response to the averments contained in paragraph 1 of the Complaint, Experian admits that plaintiff's action is brought pursuant to the FCRA and that plaintiff is a "consumer" as that term is defined by the FCRA. Furthermore, Experian admits that this Court has subject

1 matter jurisdiction over this matter. Experian, however, expressly denies that it is liable to
2 plaintiff or that plaintiff is in any way entitled to relief from Experian. Experian lacks the
3 knowledge or information sufficient to form a belief as to the truth or falsity of the other
4 averments that purport to apply to plaintiff, and on that basis, denies those averments. Experian
5 denies the remaining averments of paragraph 1.

6 2. In response to the averments contained in paragraph 2 of the Complaint, Experian
7 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
8 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
9 denies those other averments. Experian denies the remaining averments of paragraph 2.

10 3. In response to the averments contained in paragraph 3 of the Complaint, Experian
11 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
12 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
13 denies those other averments. Experian denies the remaining averments of paragraph 3.

14 4. In response to the averments contained in paragraph 4 of the Complaint, Experian
15 states that it lacks knowledge or information sufficient to form a belief as to the truth or falsity of
16 the other averments that purport to apply to plaintiffs and/or other defendants and, on that basis,
17 denies those other averments. Experian denies the remaining averments of paragraph 4.

18 5. In response to the averments contained in paragraph 5 of the Complaint, Experian
19 admits that plaintiff is a “consumer” as that term is defined by the FCRA. Experian lacks
20 knowledge or information concerning plaintiff’s residency and, on that basis, denies those
21 averments. Experian denies the remaining averments contained in paragraph 5 of the Complaint.

22 6. In response to the averments contained in paragraph 6 of the Complaint, Experian
23 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 averments that purport to apply to other defendants and, on that basis, denies those averments.
25 Experian denies the remaining averments contained in paragraph 6 of the Complaint.

26 7. In response to the averments contained in paragraph 7 of the Complaint, Experian
27 admits that it is an Ohio corporation that is authorized to do, and is doing, business in the State of
28 California. Experian admits that it is a consumer reporting agency as defined in the FCRA and as

1 such, receives credit information and other information on consumers for the purpose of
2 furnishing consumer reports to third parties as defined by the FCRA. Experian denies the
3 remaining averments of paragraph 7.

4 8. In response to the averments contained in paragraph 8 of the Complaint, Experian
5 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 averments that purport to apply to other defendants and, on that basis, denies those averments.
7 Experian denies the remaining averments contained in paragraph 8 of the Complaint.

8 9. In response to the averments contained in paragraph 9 of the Complaint, Experian
9 objects to being referenced collectively as the "CRA defendants." Experian denies the remaining
10 averments contained in paragraph 9 of the Complaint.

11 10. In response to the averments contained in paragraph 10 of the Complaint, Experian
12 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
13 averments that purport to apply to other defendants and, on that basis, denies those averments.
14 Experian admits that it receives consumer data from Capital One. Experian denies the remaining
15 averments contained in paragraph 10 of the Complaint.

16 11. Paragraph 11 of the Complaint does not require an answer because it does not
17 contain any factual allegations. To the extent an answer is required, Experian denies the
18 averments contained in paragraph 11 of the Complaint.

19 12. In response to the averments contained in paragraph 12 of the Complaint, Experian
20 states that the FCRA speaks for itself. Experian denies the remaining averments contained in
21 paragraph 12 of the Complaint.

22 13. In response to the averments contained in paragraph 13 of the Complaint, Experian
23 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
24 averments that purport to apply to plaintiff, third parties, and/or other defendants and, on that
25 basis, denies those averments. Experian denies the remaining averments contained in
26 paragraph 13 of the Complaint.

27 14. In response to the averments contained in paragraph 14 of the Complaint, Experian
28 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the

1 averments that purport to apply to plaintiff, third parties, and/or other defendants and, on that
2 basis, denies those averments. Experian denies the remaining averments contained in
3 paragraph 14 of the Complaint.

4 15. In response to the averments contained in paragraph 15 of the Complaint, Experian
5 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
6 averments that purport to apply to plaintiff, third parties, and/or other defendants and, on that
7 basis, denies those averments. Experian denies the remaining averments contained in
8 paragraph 15 of the Complaint.

9 16. In response to the averments contained in paragraph 16 of the Complaint, Experian
10 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
11 averments that purport to apply to other defendants and/or third parties and, on that basis, denies
12 those averments. Experian further states that it has not yet completed its investigation with regard
13 to its reporting of plaintiff's credit information. Therefore, Experian is without knowledge or
14 information sufficient to form a belief as to the truth or the falsity of the averments that purport to
15 apply to plaintiff's credit report and, on that basis, denies those averments. Experian denies the
16 remaining averments of paragraph 16.

17 17. In response to the averments contained in paragraph 17 of the Complaint, Experian
18 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
19 averments that purport to apply to the other defendants and, on that basis, denies those averments.
20 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
21 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
22 any other relief whatsoever against Experian. Experian denies the remaining averments of
23 paragraph 17.

24 18. In response to the averments contained in paragraph 18 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to plaintiffs and/or other defendants and, on that basis, denies
27 those averments. Experian expressly denies that it violated the FCRA, either negligently or
28 intentionally. Furthermore, Experian denies that plaintiff is entitled to any relief sought in the

1 Complaint or to any other relief whatsoever against Experian. Experian denies the remaining
2 averments of paragraph 18.

3 19. In response to the averments contained in paragraph 19 of the Complaint, Experian
4 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 averments that purport to apply to the other defendants and, on that basis, denies those averments.
6 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
7 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
8 any other relief whatsoever against Experian. Experian denies the remaining averments contained
9 in paragraph 19 of the Complaint.

10 20. In response to the averments contained in paragraph 20 of the Complaint, Experian
11 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
12 averments that purport to apply to the other defendants and, on that basis, denies those averments.
13 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
14 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
15 any other relief whatsoever against Experian. Experian denies the remaining averments contained
16 in paragraph 20 of the Complaint.

17 21. In response to the averments contained in paragraph 21 of the Complaint, Experian
18 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
19 averments that purport to apply to the other defendants and, on that basis, denies those averments.
20 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
21 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
22 any other relief whatsoever against Experian. Experian denies the remaining averments contained
23 in paragraph 21 of the Complaint.

24 22. In response to the averments contained in paragraph 22 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to the other defendants and, on that basis, denies those averments.
27 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
28 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to

1 any other relief whatsoever against Experian. Experian denies the remaining averments contained
2 in paragraph 22 of the Complaint.

3 23. In response to the averments contained in paragraph 23 of the Complaint, Experian
4 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 averments that purport to apply to the other defendants and, on that basis, denies those averments.
6 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
7 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
8 any other relief whatsoever against Experian. Experian denies the remaining averments contained
9 in paragraph 23 of the Complaint.

10 24. Paragraph 24 of the Complaint does not require an answer because it does not
11 include any factual averments. To the extent an answer is required, Experian denies the
12 averments in paragraph 24.

13 25. In response to the averments contained in paragraph 25 of the Complaint, Experian
14 states that the FCRA speaks for itself. Experian denies the remaining averments contained in
15 paragraph 25 of the Complaint.

16 26. In response to the averments contained in paragraph 26 of the Complaint, Experian
17 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
18 averments that purport to apply to third parties and, on that basis, denies those averments.
19 Experian further states that it has not yet completed its investigation with regard to its reporting of
20 plaintiff's credit information. Therefore, Experian is without knowledge or information sufficient
21 to form a belief as to the truth or the falsity of the averments that purport to apply to plaintiff's
22 credit report and, on that basis, denies those averments. Experian denies the remaining averments
23 of paragraph 26.

24 27. In response to the averments contained in paragraph 27 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to the other defendants and, on that basis, denies those averments.
27 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
28 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to

1 any other relief whatsoever against Experian. Experian denies the remaining averments contained
2 in paragraph 27 of the Complaint.

3 28. In response to the averments contained in paragraph 28 of the Complaint, Experian
4 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 averments that purport to apply to the other defendants and, on that basis, denies those averments.
6 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
7 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
8 any other relief whatsoever against Experian. Experian denies the remaining averments contained
9 in paragraph 28 of the Complaint.

10 29. In response to the averments contained in paragraph 29 of the Complaint, Experian
11 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
12 averments that purport to apply to the other defendants and, on that basis, denies those averments.
13 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
14 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
15 any other relief whatsoever against Experian. Experian denies the remaining averments contained
16 in paragraph 29 of the Complaint.

17 30. In response to the averments contained in paragraph 30 of the Complaint, Experian
18 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
19 averments that purport to apply to the other defendants and, on that basis, denies those averments.
20 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
21 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
22 any other relief whatsoever against Experian. Experian denies the remaining averments contained
23 in paragraph 30 of the Complaint.

24 31. In response to the averments contained in paragraph 31 of the Complaint, Experian
25 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
26 averments that purport to apply to the other defendants and, on that basis, denies those averments.
27 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
28 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to

1 any other relief whatsoever against Experian. Experian denies the remaining averments contained
2 in paragraph 31 of the Complaint.

3 32. In response to the averments contained in paragraph 32 of the Complaint, Experian
4 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
5 averments that purport to apply to the other defendants and, on that basis, denies those averments.
6 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
7 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
8 any other relief whatsoever against Experian. Experian denies the remaining averments contained
9 in paragraph 32 of the Complaint.

10 33. In response to the averments contained in paragraph 33 of the Complaint, Experian
11 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
12 averments that purport to apply to the other defendants and, on that basis, denies those averments.
13 Experian expressly denies that it violated the FCRA, either negligently or intentionally.
14 Furthermore, Experian denies that plaintiff is entitled to any relief sought in the Complaint or to
15 any other relief whatsoever against Experian. Experian denies the remaining averments contained
16 in paragraph 33 of the Complaint.

17 34. Paragraph 34 of the Complaint does not require an answer because it does not
18 include any factual averments. To the extent an answer is required, Experian denies the
19 averments of paragraph 34.

20 35. In response to the averments contained in paragraph 35 of the Complaint, Experian
21 states that the FCRA speaks for itself. Experian denies the remaining averments contained in
22 paragraph 35 of the Complaint.

23 36. In response to the averments contained in paragraph 36 of the Complaint, Experian
24 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
25 averments that purport to apply to the other defendants and, on that basis, denies those averments.
26 Experian further states that to the extent the averment suggests that Experian negligently or
27 intentionally permitted false credit information to be included in plaintiff's credit file, Experian
28 denies the averment. Experian denies the remaining averments of paragraph 36.

1 37. In response to the averments contained in paragraph 37 of the Complaint, Experian
2 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
3 averments that purport to apply to the other defendants and, on that basis, denies those averments.
4 Experian further states that to the extent the averment suggests that Experian negligently or
5 intentionally permitted false credit information to be included in plaintiff's credit file, Experian
6 denies the averment. Experian denies the remaining averments of paragraph 37.

7 38. In response to the averments contained in paragraph 38 of the Complaint, Experian
8 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
9 averments that purport to apply to the other defendants and, on that basis, denies those averments.
10 Experian further states that to the extent the averment suggests that Experian negligently or
11 intentionally permitted false credit information to be included in plaintiff's credit file, Experian
12 denies the averment. Experian denies the remaining averments of paragraph 38.

13 39. In response to the averments contained in paragraph 39 of the Complaint, Experian
14 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
15 averments that purport to apply to the other defendants and, on that basis, denies those averments.
16 Experian further states that to the extent the averment suggests that Experian negligently or
17 intentionally permitted false credit information to be included in plaintiff's credit file, Experian
18 denies the averment. Experian denies the remaining averments of paragraph 39.

19 40. In response to the averments contained in paragraph 40 of the Complaint, Experian
20 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
21 averments that purport to apply to other defendants and, on that basis, denies those averments.
22 Experian further states that to the extent the averment suggests that Experian negligently or
23 intentionally permitted false credit information to be included in plaintiff's credit file, Experian
24 denies the averment. Experian denies the remaining averments of paragraph 40.

25 41. In response to the averments contained in paragraph 41 of the Complaint, Experian
26 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
27 averments that purport to apply to other defendants and, on that basis, denies those averments.
28 Experian denies the remaining averments of paragraph 41.

1 42. In response to the averments contained in paragraph 42 of the Complaint, Experian
2 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
3 averments that purport to apply to other defendants and, on that basis, denies those averments.
4 Experian denies the remaining averments of paragraph 42.

5 43. In response to the averments contained in paragraph 43 of the Complaint, Experian
6 lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
7 averments that purport to apply to other defendants and, on that basis, denies those averments.
8 Experian denies the remaining averments of paragraph 43.

9 44. In response to the averments contained in the unnumbered paragraph beginning
10 “Wherefore” and each of its subparts, Experian denies that plaintiff is entitled to any relief sought
11 in the Complaint or to any other relief whatsoever against Experian. Experian denies the
12 remaining averments of these unnumbered paragraphs.

13 **AFFIRMATIVE DEFENSES**

14 45. In addition to the responses to the individual paragraphs above, Experian further
15 pleads the following affirmative defenses.

16 **FIRST DEFENSE**

17 46. As an affirmative defense, Experian states that the injuries and damages allegedly
18 sustained by plaintiff were directly and proximately caused by the acts of others, including the
19 alleged “Imposter.”

20 **SECOND DEFENSE**

21 47. As an affirmative defense, Experian states that plaintiff’s rights of recovery are
22 barred by the doctrines of waiver, estoppel or laches and by the statute of limitations as set out in
23 15 U.S.C. §1681p, and any other applicable statute of limitations.

24 **THIRD DEFENSE**

25 48. As an affirmative defense, Experian states that plaintiff’s claims against Experian
26 are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

27 **FOURTH DEFENSE**

28 49. As an affirmative defense, Experian states that plaintiff’s rights of recovery based

1 upon any alleged action or proceeding under state or common law are barred pursuant to 15
2 U.S.C. §1681h(e).

3 **FIFTH DEFENSE**

4 50. As an affirmative defense, Experian states that all or part of the damages allegedly
5 suffered by plaintiffs in this action were caused by plaintiff's failure to mitigate damages as
6 required by law.

7 **SIXTH DEFENSE**

8 51. As an affirmative defense, Experian states that plaintiff is barred from recovery to
9 the extent plaintiff was contributorily and/or comparatively negligent.

10 **SEVENTH DEFENSE**

11 52. As an affirmative defense, Experian states that the complaint fails to state a claim
12 upon which relief can be granted to the plaintiffs and should be dismissed.

13 **EIGHTH DEFENSE**

14 53. As an affirmative defense, Experian states that any claims for punitive or
15 exemplary damages violate Experian's right to due process of law under the United States and
16 California Constitutions.

17 **PRAYER**

18 WHEREFORE, defendant Experian prays that plaintiff take nothing as a result of this suit,
19 that this action be dismissed in its entirety, and that Experian be awarded all costs, including
20 reasonable attorney's fees, and other relief that the Court deems just and proper.
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1 Dated: October 23, 2007

JONES DAY

3 By: /S/ David L. Wallach

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13 Attorneys for Defendant
14 EXPERIAN INFORMATION SOLUTIONS,
15 INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served on Andrew J. Ogilvie, Kemnitzer, Anderson, Barron, Ogilvie & Brewer LLP, 445 Bush Street, 6th Floor, San Francisco, California 94108, counsel for plaintiff, and all other counsel of record via the electronic filing system this 23 day of October, 2007.

/S/ David L. Wallach
David L. Wallach